United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-7466

In The

United States Court of Appeals

For The Second Circuit

B

P/S

MARRIOTT IN-FLITE SERVICES, A DIVISION OF MARRIOTT CORPORATION,

Appellant,

vs.

LOCAL 504, AIR TRANSPORT DIVISION, TRANSPORT WORKERS OF AMERICA, AFL-CIO,

Appellee.

BRIEF FOR APPELLEE

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v.

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Appellee

BRIEF FOR THE APPELLEE

I. STATEMENT OF ISSUE PRESENTED

Whether Transport Workers Local 504 is a labor organization subject to the secondary boycott prohibitions of the Labor Management Relations Act.

II. STATEMENT OF THE CASE

Rather than burden the record by repeating the Appellant's Statement of the case, we will

concede that for the purpose of this Appeal it is substantially correct. We would respectfully contend that the strike by Local 504 against KLM was not limited to the commissary employees. The employees covered by other TWU agreements also struck KLM over the terms and conditions of their employment.

DEFINITIONAL PROVISIONS
OF 29 USC 152 EXEMPT
LOCAL 504 FROM LMRA

Section 2 (5) of the Labor Management Relations Act 29 U.S.C. 151 et. seq. (hereinafter the "Act" or "LMRA" defines a labor organization as follows:

> "The term 'labor organization' means any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes....."
> (underlining added)

Section 2 (3) defines as an employee, in pertinent part, as follows:

> "The term 'employee'.....shall not include any individual employed.... by an employer subject to the Railway Labor Act as amended from time to time....."

Section 2 (2) defines an employer, in pertinent part, as follows:

> "The term 'employer'.....shall not include.....any person subject to the Railway Labor Act, as amended from time to time....." (underlining added)

Section 2 (1) defines a person as follows:

> "The term 'person' includes one or more individuals, labor organizations ....."

Obviously then, a labor organization (Local 504) when representing employees employed by a Railway Labor Act employer (KLM) is not a person under the LMRA.

The 1959 amendments to Section 8 (b) (4) iii B of Act did not expand the scope of labor organizations covered by the Act.

In footnote to Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co. 394 U.S. 369, 39 S. Ct.

1109 (1969) the Supreme Court similarly interpreted the statute:

> ".....the amendment did not expand the scope of 'employees' or 'labor organizations' whom the Act forbade to engage in such conduct" 394 U.S. at 377.

Section 8 (b) (4) iii B of the Act proscribes certain activity by a 'labor organization'. As set forth above, Local 504 does not meet the requirements of the definition of labor organization.

Section 303,29 U.S.C. 187,of the LMRA permits suits against "labor organizations" as limited by Section 301,29 U.S.C. 185. Clearly, a Railway Labor Act labor organization (Local 504) is not a "labor organization" as comtemplated in Sections 301 and 305. Bruno v. Northeast Airlines D.C. Mass. 1964, 299 F.S. 716, 56 LRRM 2835; Brotherhood of Locomotive Firemen and Enginemen v. United Transport Union, CA Ohio 1972, 471 F_2 8, 82 LRRM 2423.

Section 303 (a) was amended in 1959 (Section 704 (e), P.L. 86-257) as was Section 8 (b) 4 (Section 704 (a), P.L. 86-257). The amendments to both Sections were included under Title VII of the 1959 Act. The term "labor organization" that was

used in the pre-1959 Act continued to be used in the 1959 Act in both Sections.

There were seven (7) "Titles" under the 1959 Act. Section 3 of the 1959 Act, 29 U.S.C. 402, changed the definitions of employers, employees and labor organizations and expanded the meaning of "industry affecting commerce". But this expanded definition of "labor organization" only applied to titles I, II, III, IV, V (except 505) and VI. Section 3 of the LMRA, 29 U.S.C. 402, P.L. 86-257 reads as follows:

> "Section 3. For the purposes of titles I, II, III, IV, V (except 505) and VI of this Act....."

Judge Bartels, of this Court, in the case of United States of America v. Davidoff 359 F. Supp. 545; 83 LRRM 2394, in dismissing the indictment of a Union official (Mr. Davidoff was secretary-treasurer of Local 295, IBT - a union, by the way, that represents many non-RLA employees) held that:

> "What is crucial in the amendment set forth in the LMRDA in 1959 is the definitions contained in Section 3 of that Act. In defining 'employer' in sub-

section (e) and the term employee in subsection (f), Section 3 expressly excepts from the application of its definitions Section 505, which included the amendment to Section 186 (b). Thus, we are remanded to the original definitions of 'employer' and 'employee' contained in Section 152 (2) and (3) of the Taft-Hartley Act, as quoted above, for the purpose of defining the scope of 29 U.S.C. 186". 359 F Supp 546

The same can be said of the amendments to Section 303 (a) and 8 (b) (4). Said amendments were included under Title VII and Title VII was excluded from the expanded definitions.

IN THE DISPUTE WITH KLM
LOCAL 504 WAS A RAILWAY
LABOR ACT LABOR ORGANIZATION
NOT A LMRA LABOR ORGANIZATION

It is conceded by both parties that at the time of the strike and the picketting that KLM, the primary employer, was a Railway Labor Act employer and that Local 504's relations with KLM were governed

exclusively by the Railway Labor Act.

The number of other members in Local 504 who may be governed by the LMRA should not be controlling. When the Local is involved in Railway Labor Act matters it should be governed by the Railway Labor Act. When it acts on behalf of other LMRA members, its activities should be governed by the LMRA. There is nothing inconsistent or illogical about that concept. Section 2 (2) of the LMRA contemplates that a "labor organization" can also be an "employer". In New York State, for example, the same labor organization may represent employees governed by the New York State Labor Law, the Public Employees Fair Employment Act (Taylor Law), the Railway Labor Act and the National Labor Relations Act.

The plaintiff contends that because Local 504, in disputes concerning LMRA employers and employees, has admitted that it is a labor organization within the meaning of LMRA it must be a LMRA labor organization forever and under all circumstances. Triangle Maintenance Corp. 194 NLRB 486 (1971); Kaynard v. Transport Workers Union Local 504 306 F Supp 344.

This concept is without merit. When Local 504

deals with the various airlines who employ most of its members, its conduct is, and must be, governed by the Railway Labor Act.

In Marriott Corp. v. N.L.R.B. 491 F_2 367, 85 LRRM 2257, the U.S. Court of Appeals, Ninth Circuit, really did not analyze the statute. It gave "great weight to the experienced judgment of the Board."

In deciding that Marriott was not entitled to damages, the Court stated as part of its reason, the following:

> "In this case, the language of Section 8(e) at least supports the view that the Board might not have jurisdiction." 491 F_2 371.

The NLRB wanted to extend its jurisdiction in the Marriott case. It justified taking jurisdiction by the nature of the dispute. [illegible]et forth in its decision (197 NLRB 18), the Board found that:

> "The Union (IAM) was primarily concerned with Marriott's status as a non-union caterer and not with the preserving work for unit employees." 491 F_2 370.

Local 504's dispute with KLM was, in part at least, concerned with preserving KLM's commissary work for unit employees.

The Board's conclusion was also based on the fact that 88% of IAM's members were employees within the meaning of Section 2 (3) of the LMRA. Although we do not think that numbers should be controlling, if they are, then when the numbers are reversed the decision should be reversed.

Local 504 has a membership of approximately 7600, of whom only 1000 are employed by non-RLA employers. Thus, approximately 86% are RLA employees, exactly the reverse of the situtation in Marriott v. NLRB, supra.

The plaintiff's reliance upon Engineers Association v. Interlake Steamship Co., 370 U.S. 173, (1962), National Marine Engineers Beneficial Association v. NLRB, 274 F 2d 167, International Brotherhood of Electrical Workers (B.B. Mc Cormick) 150 NLRB 363, 370 enfg 350 F 2d 791, and its assertion that Judge Pratt ignored the thrust of these cases is without merit.

Judge Pratt was correct in relying upon the Jacksonville Terminal case. In making that decision, the Supreme Court was aware of and analyzed the differences between each of the above cases and the facts in Jacksonville. Incidentally, as I read the facts in Jacksonville, the secondary boycott was against some non-railway employers.

As I pointed out, in Jacksonville, the Court was "not there (Marine Engineers) concerned with a conflict between two independent and mutually exclusive federal labor schemes".

The Court further pointed out:

> "Whatever might be said where railway organizations act as agents for, or as joint venturers with, unions subject to LMRA, see Electrical Workers v. NLRB, 122 U.S. App. D.C. 8.....or where railway unions are engaged in a dispute on behalf of their non-rail employees, or where a rail carrier seeks a remedy against the conduct

> of nonrailway employees, see Steelworkers v. NLRB, 376 U.S. 492, Teamsters Union v. New York, N.H. & H.R. Co., 350 U.S. 155, none of these is the case. This is a railway labor dispute pure and simple. ..... The LMRA has no direct application to thepresent case." 394 U.S. 379

SUMMARY

The definition of "labor organization in Sections 303 (a) and 8 (b) 4 of LMRA was not expanded by the 1959 Amendments so as to affect the activities of a Railway Labor Act union engaged in a pure railway labor dispute. Local 504 and KLM were engaged in such a dispute. Therefore, Local 504 is excluded from the provisions of Sections 303 (a) and 8 (b) 4 of the LMRA.

CONCLUSION

The judgment of the Court below should be affirmed.

Respectfully submitted,

WALLACE and O'HAIRE, P.C.
By ANDREW J. WALLACE
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Hicksville, New York 11801

A 201 Affidavit of Service by Mail

LUTZ APPELLATE PRINTERS, INC.

FEDERAL COURT
SECOND CIRCUIT

MARRIOTT IN-FLITE SERVICES, a division of Marriott Corporation,
Plaintiff-Appellant,

- against -

LOCAL 505, AIR TRANSPORT DIVISION TRANSPORT WORKERS OF AMERICA, AFL CIO,
Defendant-Appellee.

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Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Velma N. Howe, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 298 Macon Street, Brooklyn, New York 11216. That on the 18th *day of* January, *19* 77 *deponent served the annexed*

Brief *upon* Ivan Rich *attorney(s) for*

in this action, at 5161 River Road
Washington, D.C. 20016

the address designated by said attorney(s) for that purpose by depositing 3 *true copy* 125 *of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.*

Sworn to before me, this 18th
day of January, *19* 77

Velma N. Howe

Print name beneath signature
Velma N. Howe

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977